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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re P.V., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. P.V., Defendant and Appellant.	D074296 (Super. Ct. No. J241336)

APPEAL from a judgment of the Superior Court of San Diego County, Aaron H. Katz, Judge. Affirmed in part and remanded with directions.

Matthew R. Garcia, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Michael Pulos and Joy Utomi, Deputy Attorneys General, for Plaintiff and Respondent.

Based on a single act of attempting to enter the United States from Mexico with methamphetamine wrapped to his torso, the juvenile court sustained allegations that P.V. imported methamphetamine into the state (Health & Saf. Code,[1] § 11379, subd. (a); count 1), transported methamphetamine (Health & Saf. Code, § 11379, subd. (a); count 2), and possessed methamphetamine for purposes of sale (§ 11378; count 3). As to all three counts, the juvenile court found true the allegation that the methamphetamine exceeded one kilogram by weight. (§ 11370.4, subd. (b)(1).)

On appeal, P.V. contends that under Penal Code section 954, which prohibits multiple convictions for different statements of the same offense as well as *People v. Vidana* (2016) 1 Cal.5th 632 (*Vidana*), counts 1 (importation) and 2 (transportation) must be consolidated because they are based on one act: his attempt to cross the border with methamphetamine.

On the record before us, where P.V.'s convictions for importation and transportation of methamphetamine are based on a single act involving one type of drug, P.V. cannot be convicted of both under Penal Code section 954. Accordingly, we remand the matter with directions that the trial court strike one of the convictions. We otherwise affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

P.V. lives and goes to school in Mexico. On May 29, 2018, P.V. was in the pedestrian line at the San Ysidro port of entry to enter the United States from Mexico. A

1 Undesignated statutory references are to the Health and Safety Code.

United States Customs and Border Patrol (CBP) agent directed P.V. to secondary inspection. Another agent searched P.V. and removed a package wrapped to his torso, the contents of which were ultimately determined to be 2.702 kilograms of methamphetamine. The CBP contacted the San Diego County Sheriff's Department, and a deputy responded. On questioning, P.V. admitted he was attempting to transport drugs across the border, he did not know what types of drugs he had, he would be paid $300 for the trip, and that was the first time he had done anything of this nature.

The San Diego County District Attorney filed a petition charging P.V. as follows:

"Count 1: On or about May 29, 2018, [P.V.] did unlawfully import into this state and offer to import into this state a controlled substance, to wit: methamphetamine, in violation of Health and Safety Code section 11379[, subdivision] (a), a felony. [¶] . . . [¶]

"Count 2: On or about May 29, 2018, [P.V.] did unlawfully transport and offer to transport a controlled substance to wit: methamphetamine, in violation of Health and Safety Code section 11379[, subdivision] (a), a felony." (Some capitalization omitted.)

The People also charged P.V. with possession of methamphetamine for purposes of sale (§ 11378; count 3). As to all three counts, the petition alleged the methamphetamine exceeded one kilogram by weight (§ 11370.4, subd. (b)(1)). At the adjudication hearing, the juvenile court made true findings on all three counts. It ordered P.V. committed to the San Diego County Probation Department and a period of confinement not to exceed 90 days in the Short Term Offender Program.

DISCUSSION

Asserting the charged importation and transportation counts arose from his single act of attempting to enter the United States with methamphetamine, P.V. contends the counts are the same offense under two different legal theories and thus must be consolidated into a single count under Penal Code section 954. He maintains that while he could be charged with both transportation and importation of a controlled substance, he cannot properly be convicted of multiple counts for those offenses under *Vidana*, *supra*, 1 Cal.5th 632.[2]

The People respond that when the language of section 11379 is given its usual and ordinary meaning, importation and transportation of controlled substances are two separate offenses. Specifically, they compare the dictionary definition of import, " 'to bring from a foreign or external source,' " with the " 'plain, nontechnical' " meaning of transport for sale, which is established by " 'carrying or conveying a usable quantity of a controlled substance with knowledge of its presence and illegal character.' " (*People v. Emmal* (1998) 68 Cal.App.4th 1313, 1316, superseded by statute on other grounds as stated in *People v. Martinez* (2018) 4 Cal.5th 647, 650-651.) The People point out that importation of controlled substances need not be for sale or otherwise distinguished from personal use, both of which are requirements for the transportation offense. (§ 11379, subd. (c); *Emmal*, at p. 1316.) From this comparison, the People argue the Legislature

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[2] P.V. does not argue that either of the crimes are necessarily included in the other. There is a judicially created exception that prohibits multiple convictions based on necessarily included offenses. (*People v. Sanders* (2012) 55 Cal.4th 731, 736.)

did not intend to restate the same legal theory. Thus, according to the People, "import and transport are two separate offenses describing two different acts" and P.V. could be convicted of both because they are not different statements of the same offense for purposes of Penal Code section 954.

A. *Legal Principles and Standard of Review*

Penal Code section 954 provides: "An accusatory pleading may charge two or more different offenses connected together in their commission, or different statements of the same offense or two or more different offenses of the same class of crimes or offenses, under separate counts . . . . The prosecution is not required to elect between the different offenses or counts set forth in the accusatory pleading, but the defendant may be convicted of any number of the offenses charged . . . ." The section concerns the propriety of multiple convictions, not multiple punishments, which are governed by Penal Code section 654. (*People v. White* (2017) 2 Cal.5th 349, 354.)

" 'The most reasonable construction of the language in [Penal Code] section 954 is that the statute authorizes multiple convictions for different or distinct offenses, but does not permit multiple convictions for a different statement of the same offense when it is based on the same act or course of conduct.' " (*Vidana*, *supra*, 1 Cal.5th at p. 650; *People v. Brunton* (2018) 23 Cal.App.5th 1097, 1102 (*Brunton*); *People v. Shiga* (2019) 34 Cal.App.5th 466, 480-481 (*Shiga*).) " 'Whether a statute defines different offenses or merely different ways of committing the same offense "properly turns on the Legislature's intent in enacting these provisions, and if the Legislature meant to define

only one offense, we may not turn it into two." ' " (*Brunton*, at p. 1103, quoting *In re C.D.* (2017) 18 Cal.App.5th 1021, 1025-1026; see also *Vidana*, at p. 648.)

In *Vidana*, *supra*, 1 Cal.5th 632, the California Supreme Court was presented with a defendant credit agent who had been convicted of both larceny (Pen. Code, § 484, subd. (a)) and embezzlement (Pen. Code, § 503) from skimming cash from customer payments. (*Vidana*, at p. 635.) The Court of Appeal struck the larceny conviction on grounds the defendant could not be convicted of both. (*Ibid*.) *Vidana* upheld that result, holding larceny and embezzlement are "different statements of the same offense, and that a defendant may not be convicted of both based on the same course of conduct." (*Id*. at pp. 648, fn. omitted, 651.) The court observed that the two offenses "have different elements," "neither is a lesser included offense of the other," and they are found in "self-contained" statutes. (*Ibid*.) Nevertheless, because the Legislature had stated it consolidated larceny, embezzlement, and obtaining property under false pretenses into one crime designated as theft, and also enacted Penal Code section 490a, which required the word "theft" be read into any statute mentioning larceny, embezzlement, or stealing (*Vidana*, at pp. 648, 651, discussing Penal Code section 490a), *Vidana* concluded the Legislature's "obvious intent" was to create a single crime of theft. (*Ibid*.) The court further observed that larceny and embezzlement "generally have the same punishment." (*Id*. at p. 648.) It explained the terms larceny and embezzlement "are simply different ways of describing the behavior proscribed by those statutes." (*Id*. at p. 649.)

In *Brunton*, *supra*, 23 Cal.App.5th 1097, a panel of this court, applying *Vidana*, addressed whether a defendant could be convicted of both assault with a deadly weapon

(Pen. Code, § 245, subd. (a)(1)) and assault by means of force likely to produce great bodily injury (force-likely assault; Pen. Code, § 245, subd. (a)(4)) where "the factual predicate of each count was the same—that [defendant] choked his cellmate with a tightly rolled towel." (*Brunton*, at p. 1105.) Observing that the Legislature had first set out the crimes "as 'alternative provisions within a single statutory subdivision' " and were later placed in separate paragraphs only for applying recidivist statutes (*id*. at p. 1103),[3] this court determined that although the amended information alleged separate counts, each asserted only a different statement of the same offense because each count was "based on the manner in which [defendant] used the same noninherently dangerous object." (*Id*. at p. 1105.) This was so because, for purposes of the Penal Code section 245, subdivision (a)(1) count, the noninherently-dangerous towel only became a deadly weapon when defendant used it in a " ' "manner . . . capable of producing and likely to produce, death or great bodily injury." ' " (*Id*. at pp. 1105-1106, quoting *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028-1029.) This court departed from the conclusion in *In re Jonathan R.* (2016) 3 Cal.App.5th 963, in which the Court of Appeal reviewed dual assault convictions under Penal Code section 245, subdivision (a)(1) and (4), and determined the defendant could be separately convicted of both. (*In re Jonathan R.*, at

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3 *Brunton* concluded "the Legislature did not intend for its 2011 amendment of [Penal Code] section 245 to create two offenses where the former statute set forth only one." (*Brunton*, *supra*, 23 Cal.App.5th at p. 1107.) This court recognized the Legislature made clear it was making only " 'technical, nonsubstantive changes' " to Penal Code section 245 (Stats. 2011, ch. 183, § 1) "to provide clarity for purposes of recidivist enhancements—it was not ' "creat[ing] any new felonies or expand[ing] the punishment for any existing felonies[.]" ' " (*Brunton*, at p. 1107.)

pp. 967-971.) In light of *Vidana* and the legislative history, this court held in *Brunton* that "when based on a defendant's single act of using a noninherently dangerous object in a manner likely to produce great bodily injury, [Penal Code] section 245[, subdivision] (a)(1) and (4) are merely different statements of the same offense such that the defendant may not be convicted of violating both subparts of the subdivision." (*Brunton*, *supra*, 23 Cal.App.5th at p. 1107.)

As is evident from the foregoing, our determination of whether section 11379 defines different offenses or merely different ways of committing the same offense turns on the Legislature's intent. (*Vidana*, *supra*, 1 Cal.5th at p. 648; *Brunton*, *supra*, 23 Cal.App.5th at p. 1102.) "In addressing this question, ' "[w]e begin by examining the statute's words, giving them a plain and commonsense meaning. [Citation.] We do not, however, consider the statutory language 'in isolation.' [Citation.] Rather, we look to 'the entire substance of the statute . . . in order to determine the scope and purpose of the provision . . . . [Citation.]' [Citation.] That is, we construe the words in question ' "in context, keeping in mind the nature and obvious purpose of the statute . . . ." [Citation.]' [Citation.] We must harmonize 'the various parts of a statutory enactment . . . by considering the particular clause or section in the context of the statutory framework as a whole.' " ' " (*People v. Gonzalez* (2014) 60 Cal.4th 533, 537 (*Gonzalez*).) " 'If, however, the statutory language is susceptible of more than one reasonable construction, we can look to legislative history in aid of ascertaining legislative intent.' " (*Id*. at pp. 537-538.) We resolve ambiguities in favor of the offender so long as we cannot " ' "fairly discern a contrary legislative intent." ' " (*People v. Soto* (2018) 4 Cal.5th 968, 980.)

Whether P.V.'s multiple convictions are proper under Penal Code section 954 is a question we review de novo, because it rests on issues of statutory interpretation and is also a question of law based on undisputed facts. (See *People v. Gonzalez* (2017) 2 Cal.5th 1138, 1141 [questions of statutory interpretation are reviewed de novo]; accord, *People v. Villegas* (2012) 205 Cal.App.4th 642, 646; *People v. Ramirez* (1996) 41 Cal.App.4th 1608, 1613 [claim based on undisputed facts presents a question of law].)

B. *Section 11379*

Section 11379, subdivision (a) provides: "[E]very person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport any controlled substance . . . shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for a period of two, three, or four years." The statute further provides that " 'transports' means to transport for sale." (§ 11379, subd. (c).) The statute is not "drafted to be self-contained" (*Gonazlez, supra*, 60 Cal.4th at p. 539), that is, it is not divided into multiple subdivisions that "define various ways the act may be criminal" (*ibid.*) nor are there specific punishments prescribed for specific criminal acts under that subdivision. (Compare, *Gonzalez*, at p. 539 [Penal Code described two different offenses for oral copulation of an intoxicated person (Pen. Code, § 288a, subd. (i)) and oral copulation of an unconscious person (Pen. Code, subd. (f))].) It also contains one penalty for each of the mechanisms described within it, suggesting only one offense. However, because different elements are involved in transporting and importing, and also because subdivision (c) defines "transports" for

sale in a separate paragraph, we believe the statute is sufficiently ambiguous that a brief review of the statute's legislative history is in order. (Accord, *Vidana*, 1 Cal.5th at p. 648 [finding statutory scheme ambiguous because Penal Code section 484, subdivision (a) proscribed both larceny and embezzlement]; *Gonzalez*, at pp. 537-538 [" 'If, however, the statutory language is susceptible of more than one reasonable construction, we can look to legislative history in aid of ascertaining legislative intent.' "]; *Shiga*, *supra*, 34 Cal.App.5th at p. 476.)

Section 11379 was enacted as part of the 1972 California Uniform Controlled Substances Act (the Act), section 11000 et seq., "which provide[d] a pervasive and unified system to regulate legitimate uses and control unlawful traffic in and the abuse of prescription and nonprescription drugs, certain chemical compounds, and organic substances." (*People v. Alexander* (1986) 178 Cal.App.3d 1250, 1253-1254, citing Stats. 1972, ch. 1407, § 3, p. 2987 and *Review of Selected 1972 California Legislation* (1973) 4 Pacific L.J. 211.) *Alexander* explained: "The Act comprised a new division 10 of the Health and Safety Code. In passing the Act, the Legislature repealed, inter alia, former division 10, which regulated 'Narcotics' and division 10.5, which regulated 'Restricted Dangerous Drugs.' [Citations.] The new division 10 established a single, general category called 'Controlled Substances,' which was broken down into five separate lists or 'schedules.' [Citation.] [¶] For purposes of enumeration, the Act abandoned the distinction between 'Narcotics' and 'Restricted Dangerous Drugs' that had been embodied in former divisions 10 and 10.5. However, the Act indirectly maintained this distinction in setting forth the crimes involving controlled substances. Thus, article 1, chapter 6 of

the Act (§§ 11350-11356) is headed 'Offenses Involving Controlled Substances Formerly Classified as Narcotics'; and article 5 (§§ 11376-11382.5) is headed 'Offenses Involving Controlled Substances Formerly Classified as Restricted Dangerous Drugs.' The sections in article 1 incorporate those controlled substances that were formerly called 'Narcotics' by specific cross-reference to the five schedules. Similarly, the sections in article 5 incorporate those controlled substances that were formerly called 'Restricted Dangerous Drugs' by specific cross-reference. (See §§ 11350, 11351, 11352, 11353, 11355, 11377, 11378, 11378.5, 11379, 11379.5, 11380, 11380.5, 11382.) Both article 1 and article 5 contain sections that proscribe, among other things, possession, possession for sale, sale, use of minors by adults to commit proscribed acts, and sale of substances falsely represented as controlled substances. Read together, the two articles form a set of complementary statutes covering *all* controlled substances." (*Alexander, supra*, 178 Cal.App.3d at p. 1254.)

Section 11379 was formerly section 11912 of the Health and Safety Code. (See *People v. Daniels* (1975) 14 Cal.3d 857, 860; *People v. Gandotra* (1992) 11 Cal.App.4th 1355, 1369; *People v. Anderson* (1974) 43 Cal.App.3d 94, 97.) The purpose of that division on restricted dangerous drugs was the "prevention of illegal distribution of such drugs." (*Daniels*, at p. 861.) Former section 11912 set forth a general intent crime, even though the accused was required to know the character of the controlled substance at issue. (*People v. Coria* (1999) 21 Cal.4th 868, 878-879; see *Daniels*, at pp. 860-861.) *Daniels* explained in connection with sale of a restricted dangerous drug that "the offense defined in former section 11912 does not expressly require an intent 'to do a further act or

achieve a future consequence' [citation]." (*Daniels*, at p. 860.) According to *Daniels*, "[a] person who transfers possession of a restricted dangerous drug to another for cash *is engaged in traffic in such drugs* and thus subject to the severe penalties provided by law." (*Id*. at p. 861, italics added.)[4]

Effective January 1, 2014, the California Legislature amended section 11379 to define "transports" to mean transport for sale. (§ 11379, subd. (c); as amended by Stats. 2013, ch. 504, § 2.) Legislative history materials reflect a departure from criminalizing transporting controlled substances for personal use: " 'AB 721 would clarify the Legislature's intent to only apply felony drug transportation charges to individuals involved in drug trafficking or sales. Currently, an ambiguity in state law allows prosecutors to charge drug users—who are not in any way involved in drug trafficking—with TWO crimes for simply being in possession of drugs. While *current law makes it a felony for any person to import, distribute or transport drugs*, the term 'transportation' used in the Health and Safety Code has been widely interpreted to apply to ANY type of movement—even walking down the street—and ANY amount of drugs, even if the

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4 "[B]efore 1984, the offenses of transporting, selling, and manufacturing controlled substances were included *in a single statute* applying to one who 'transports, imports into this state, sells, manufactures, compounds, furnishes, administers, or gives away . . . any controlled substance . . . .' " (*People v. Coria*, *supra*, 21 Cal.4th at pp. 878-879, citing former § 11379, as amended by Stats. 1977, ch. 843, § 24 , p. 2536 and former § 11912, as amended by Stats. 1970, ch. 1098, § 16, p. 1955.) "In 1984 and 1985, the Legislature amended section 11379, and in 1985 it adopted section 11379.6, placing the offense of manufacturing controlled substances into a separate section. The sole expressed purpose of the change was 'to increase the *penalties* for those who illegally manufacture controlled substances.' " (*Coria*, at p. 879.)

evidence shows the drugs are for personal use and there is no evidence that the person is involved in drug trafficking. As a result, prosecutors are using this wide interpretation to prosecute individuals who are in possession of drugs for only personal use, and who are not in any way involved in a drug trafficking enterprise. [¶] 'This bill makes it expressly clear that a person charged with this felony must be in possession of drugs with the intent to sell. Under AB 721, a person in possession of drugs ONLY for personal use would remain eligible for drug possession charges. However, personal use of drugs would no longer be eligible for a SECOND felony charge for transportation.' " (Assem. Conc. Sen. Amends. to Assem. Bill No. 721 (2013-2014 Reg. Sess.) as amended June 27, 2013, p. 3, italics added; accord, *People v. Martinez, supra*, 4 Cal.5th at p. 655 [The "amendment to section 11379 simply means that transportation of a controlled substance without intent to sell is no longer a distinct criminal offense"].)

C. *Analysis*

The foregoing history makes it apparent that the Legislature's purpose in enacting section 11379, subdivision (a) was to proscribe unlawful distribution or trafficking of controlled substances. The 2013 amendment to the law shows no legislative intent to break transportation out into a separate offense; to the contrary, the analyses reflect the Legislature's understanding that the various acts of importing, distributing, or transporting are forms of the same felony offense. The broad purpose compels us to conclude that importing and transporting a single type of controlled substance on one occasion constitutes but one offense under that statute targeting the movement or trafficking of drugs. Such a conclusion is dictated not only by the legislative purpose but

also the statutory scheme, which describes in the same section different mechanisms for trafficking or distributing, all having the same punishment.[5]

Our holding is bolstered by cases involving a related and structurally similar statute, section 11352, subdivision (a), which proscribes much of the same conduct with respect to narcotics.[6] (See *People v. Roberts* (1953) 40 Cal.2d 483; *People v. Correa* (2012) 54 Cal.4th 331.) In *Correa*, the California Supreme Court examined its holding in *Roberts* that the possession, sale, and transportation of a controlled substance charged under a single statute constituted only one criminal offense when completed in the same course of conduct. *Correa* observed that the *Roberts* defendant was convicted on three counts of "violating [section 11352(a)'s predecessor] in three different ways on the same occasion by illegally transporting, selling, and possessing heroin." (*Correa*, at p. 340.) *Roberts* had held the three acts were improperly "charged and adjudged as separate

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5 We express no opinion on whether the same conclusion would apply if P.V. had multiple discrete controlled substances on his person. (See *People v. Rouser* (1997) 59 Cal.App.4th 1065, 1068 [involving possession of methamphetamine and heroin in prison and pointing out, "Numerous cases have upheld separate convictions for contemporaneous possession of more than one controlled substance"].)

6 Section 11352 provides: "Except as otherwise provided in this division, every person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport (1) any controlled substance specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, . . . shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for three, four, or five years."

crimes," and reversed the conviction as to two of three counts. (*Roberts*, at p. 491.) Because the *Roberts* defendant's acts " 'constitut[ed] but one offense when committed by the same person at the same time,' " the three counts " 'charge[d] but one crime' " and could support only one conviction. (*Ibid*.) As *Correa* explained, though it had tangentially referred to punishment in *Roberts*, the case did so "because [it] held that the defendant[was] wrongfully *convicted* of multiple offenses when only a single crime was committed." (*Correa*, at p. 340; see also *People v. Arndt* (1999) 76 Cal.App.4th 387, 398 ["section 11352 is intended to inhibit the trafficking and proliferation of controlled substances by deterring their movement"]; *People v. Holquin* (1964) 229 Cal.App.2d 398, 402 [examining the legislative history and statutory language of the predecessor to section 11352, subdivision (a), and concluding it "was enacted to prevent traffic in narcotics and to prevent a narcotic from getting into the hands of those having no right to possess it. To that end the section makes it a criminal offense to effect an illegal change of possession of a narcotic, *regardless of the means used to accomplish the transfer*. . . . [¶] The language of the statute makes no distinction among the various means for change of possession; the crime is the same whether the transfer of a narcotic is accomplished by selling, furnishing, administering, or giving it away," italics added], disapproved on other grounds in *People v. Daniels*, *supra*, 14 Cal.3d at pp. 861-862; *People v. Kinsley* (1931) 118 Cal.App. 593, 597 [addressing charges under predecessor statute alleging sale, furnishing, giving away, and offering to sell, furnish and give away morphine; holding the information was not fatally defective under the provisions of Penal Code section 954 "since it is apparent that the information charges appellant with the doing of various acts,

any one of which or all of which constitute a single violation of the statute mentioned in the information"].)[7]

The statutory framework of section 11379, subdivision (a) as a whole compels our conclusion as well. The statute contains variants of the same offense within a single paragraph as opposed to self-contained subdivisions. (Compare *Gonzalez*, *supra*, 60 Cal.4th at p. 349 ["Subdivision (a) of [Penal Code] section 288a defines what conduct constitutes the act of oral copulation. Thereafter, subdivisions (b) and (k) define various ways the act may be criminal. Each subdivision sets forth all the elements of a crime, and each prescribes a specific punishment. Not all of these punishments are the same. That each subdivision was drafted to be self-contained supports the view that each

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7 We recognize that in *People v. Patterson* (1989) 49 Cal.3d 615, a majority of the California Supreme Court considered the section 11352 offense to determine whether, in furnishing cocaine, the defendant committed an inherently dangerous felony for purposes of the second degree felony murder doctrine, and held "each offense set forth in the statute should be examined separately to determine its inherent dangerousness." (*Id*. at p. 625.) In deciding that issue was a decision for the trial court (*id*. at p. 625), Justice Kennard wrote over one concurring and dissenting opinion and two dissents that section 11352 "has no primary element" and the fact the "Legislature has included a variety of offenses" in the statute did not require the court "treat them as a unitary entity." (*Id*. at p. 624.) Instead, she held "each offense set forth in the statute should be examined separately to determine its inherent dangerousness." (*Id*. at p. 625.) In dissent, Justice Mosk pointed out that "[a]lthough section 11352 lists a number of prohibited acts, they all relate to a single legislative goal—the goal of stopping the flow of illegal narcotics in our society." (*Id*. at p. 636, dis. opn. of Mosk, J.) He explained the entire statute "attempts 'to prevent or deter the movement of drugs from one location to another, thereby *inhibiting trafficking in narcotics* and their proliferation in our society.' " (*Id*. at pp. 636-637, in part quoting *People v. Cortez* (1985) 166 Cal.App.3d 994, 1000.) Because *Patterson* does not involve an inquiry under Penal Code section 954, we need not follow the majority's observations concerning the nature of Health and Safety Code section 11352 for that purpose.

describes an independent offense, and therefore [Penal Code] section 954 is no impediment to a defendant's conviction under more than one such subdivision for a single act"] with *In re C.D.*, *supra*, 18 Cal.App.5th at p. 1029 [Penal Code section 245, subdivision (c) "continues to set forth the two variants of aggravated assault against a peace officer within a single clause. . . . Aggravated assault against a peace officer under [Penal Code] section 245, subdivision (c), remains a single offense, and multiple violations of the statute cannot be found when they are based on the same act or course of conduct," (citations omitted)].) All of the acts described in section 11379 expressly are subject to the same punishment. (§ 11379, subd. (a); accord, *Vidana*, *supra*, 1 Cal.5th at p. 648.)

We disagree with the Attorney General that the differences in elements of the importation and transportation offenses[8] means the Legislature did not intend both to "restate the same legal theory." *Vidana* made clear it is not determinative that crimes "have different elements," that "neither is a lesser included offense of the other," or that they are found in "self-contained" statutes. (*Vidana*, *supra*, 1 Cal.5th at p. 648.) Under

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8 The crime of transportation of controlled substances requires that the defendant (1) transported—that is, he "carr[ied] or convey[ed]" (*People v. LaCross* (2001) 91 Cal.App.4th 182, 185)—a controlled substance; (2) he did so with the intent that he or someone else sell it; (3) he knew of its presence; (4) he knew of its nature or character as a controlled substance; and (5) it was a useable amount. (CALCRIM No. 2300.) The crime of importation of a controlled substance requires that the defendant (1) imported a controlled substance into California; (2) knew of its presence; (3) knew the substance was a controlled substance; and (4) the controlled substance was in a useable amount. (§ 11379, subd. (a); CALCRIM No. 2300 [elements of importation of a controlled substance].)

current precedent, none of these differences are dispositive as to whether the Legislature intended to create different offenses.

Here, although P.V. was charged with both importation of methamphetamine into the state and transportation of methamphetamine, the factual predicate of each count was the same—P.V. attempted to enter the United States with methamphetamine wrapped to his torso. Thus, although the two counts were alleged *separately*, each effectively asserts only a " 'different statement of the same offense . . . .' " (*Vidana, supra,* 1 Cal.5th at p. 650.) Because both counts assert only a single offense arising from the same conduct, P.V. could only be properly convicted of one count.

DISPOSITION

The matter is remanded to the trial court with directions to vacate P.V.'s conviction on either count 1 for importation of a controlled substance or count 2 for transportation of a controlled substance. In all other respects the judgment is affirmed.

O'ROURKE, J.

WE CONCUR:

BENKE, Acting P. J.

AARON, J.